

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

APPLE INC.,

Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR-TSH

**RESPONSE TO EPIC’S OBJECTIONS
TO SPECIAL MASTER RULINGS ON
APPLE INC.’S PRODUCTIONS OF RE-
REVIEWED PRIVILEGE DOCUMENTS**

The Honorable Thomas S. Hixson
San Francisco Courthouse
Courtroom E - 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Magistrate Judge Hixson,

Pursuant to section 4 of the Joint Stipulation and Order Approving Privilege Re-Review Protocol (Dkt. 1092) (the “Protocol”), Apple respectfully submits the following Response to Epic’s Objections to certain of the Special Masters’ rulings on Apple’s productions of re-reviewed and privileged documents, rendered February 12 and February 14, 2025. We are submitting these documents for *in-camera* review contemporaneously with this filing.

Apple’s responses relate only to documents Apple believes are not already covered by Your Honor’s and Judge Gonzalez Rogers’ existing rulings on Apple’s privilege assertions in this post-judgment discovery. As previously noted, *see* Dkt. 1109, Apple reserves all rights as to documents affected by those rulings, including any post-judgment appellate rights.

Entry Nos. 9198 (PRIV-APL-EG_00241592), 9601 (PRIV-APL-EG_00244743), 9799 (PRIV-APL-EG_00246004), 11569 (PRIV-APL-EG_00266051)

Entry 9198 (PRIV-APL-EG_00241592) is an email from a non-lawyer to Jason Cody (in-house counsel), with another non-lawyer copied. The email consists of a single question to in-house counsel regarding changes Apple was planning in response to regulatory requirements in Korea. It is a request for legal advice and is privileged.

Entry 9601 (PRIV-APL-EG_00244743) is an email in which a non-lawyer provides a summary and analysis of a pending investigation by a Korea regulatory authority, the expected results of that investigation and any ensuing report, the regulatory process following the issuance of that report, and a summary of current media coverage. While not expressly mentioned on the face of the email, context from other emails shows that the summary reflects and memorializes the advice and feedback of lawyers. Specifically, in PRIV-APL-EG_00185120 (withheld for privilege), a non-lawyer states that they drafted the summary “[b]ased on [a] conversation” with Tina Wang (in-house counsel), and the email chain in that document shows Ms. Wang providing additional information and feedback for the summary and analysis. In another email chain (PRIV-APL-EG_00154403 (withheld for privilege)), the non-lawyer sends the draft to another non-lawyer and states the draft has “gotten legal’s blessing.” While one part of Entry 9601 concerns media coverage, the primary purpose of the email is to provide a summary and analysis of ongoing regulatory proceedings. *See Chrimar Sys. Inc. v. Cisco Sys. Inc.*, 2016 WL 1595785, at *3 (N.D. Cal. Apr. 21, 2016) (“[A] document that is not communicated between an attorney and a client may still be privileged as long as the document by its nature and contents memorializes and reflects legal advice rendered in a privileged conversation.” (quotation marks omitted)).

Entry 9799 (PRIV-APL-EG_00246004) is an email exchange between a non-lawyer and Sean Cameron (in-house counsel) regarding the scope and meaning of the Injunction and whether certain contemplated measures would comply with the Injunction. Mr. Cameron provides legal advice in response to a question the non-lawyer raised and copies advice from outside counsel. Although Epic notes that another non-lawyer was included on the chain, that non-lawyer did not participate in the conversation. The email thread is for the sole purpose of providing legal advice from both in-house and outside counsel regarding a discrete question about compliance with the Court’s Injunction and is therefore privileged. *See United States v. ChevronTexaco Corp.*, 241 F. Supp. 2d 1065, 1076 (N.D. Cal. 2002).

Apple will produce Entry 11569 (PRIV-APL-EG_00266051) without redaction.

DATED: February 20, 2025

WEIL, GOTSHAL & MANGES LLP
By: /s/ Mark A. Perry
Counsel for Defendant Apple Inc.